

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Annual Power Plant
Siting Act Hearing (2022)

REPORT TO THE COMMISSION

On or about October 6, 2022, the Public Utilities Commission (PUC) requested that the Office of Administrative Hearings conduct, on its behalf, the 2022 Annual Hearing on Power Plant Siting and Transmission Lines Routing Programs, pursuant to Minn. Stat. § 216E.07 (2022) and Minn. R. 7850.5400 (2021). Administrative Law Judge Jim Mortenson was assigned to preside over the public hearing. The PUC issued a Notice for the hearing on October 19, 2022.¹

The first of two public hearings was commenced at 9:30 a.m. on November 9, 2022, both in person and using the Cisco WebEx teleconferencing platform. Due to a flaw in virtual platform, a second hearing was convened entirely virtually at 6:00 p.m. on December 5, 2022. The hearing record closed at 4:30 p.m. on December 30, 2022, at the end of the published public comment period.²

The Annual Hearing has two key purposes. First, it is meant to advise the public of matters relating to the siting of large electric power generating plants and routing of high voltage transmission lines. Second, it affords interested persons an opportunity to be heard regarding the Commission's activities, duties, and policies pursuant to the Power Plant Siting Act (PPSA).³

I. Notice of Annual Hearing

Minn. Stat. § 216E.07 and Minn. R. 7850.5400 require that the Commission hold a public hearing each year to afford interested persons an opportunity to be heard on any matter relating to the siting of large electric generating power plants and the routing of high-voltage transmission lines. At the hearing, the Commission must inform the public of the permits issued by the Commission in the past year.⁴ The Commission must provide at least 10 days, but no more than 45 days, notice of the annual hearing, along with a

¹ See Exhibit (Ex.) 1 (Notice of Power Plant Siting Act Annual Hearing, (Oct. 19, 2022) (eDocket No. 202210-189941-01). A second Notice was issued on November 16, 2022, for a second hearing to be convened on December 5, 2022. See Ex. 2 (Notice of Power Plant Siting Act Annual Hearing, (Nov. 16, 2022) (eDocket No. 202211-190684-01).

² Ex. 2 at 2.

³ See Minn. Stat. § 216E.07; Minn. R. 7850.5400, subp. 2.

⁴ Minn. Stat. § 216E.07; Minn. R. 7850.5400, subp. 1.

tentative agenda for the hearing.⁵ The hearing notice must be mailed to or served electronically on those persons who have requested notice, and must be published in *Environmental Quality Board (EQB) Monitor* and on the Commission's calendar.⁶

On October 19, 2022, the Commission served, by U.S. Mail or electronic mail,⁷ the Notice of the Power Plant Siting and Transmission Line Routing Program Annual Hearing (Notice of Hearing) on those persons who requested notice.⁸ The Notice of Hearing contained an agenda for the hearing, as required by Minn. R. 7850.5400.⁹ On November 1, 2022, the *EQB Monitor* (an electronic newsletter issued by the Environmental Quality Board) published the Notice of Hearing.¹⁰ The Commission also posted the Notice of Hearing on the Commission's web calendar throughout the notice and public comment periods.¹¹

Representatives from the PUC, Minnesota Department of Commerce (DOC), and Department of Natural Resources (DNR) attended the hearing and gave presentations at the first hearing. Only one member of the public attended the hearing and provided comments. At the second hearing, only the PUC and DOC representatives attended and gave presentations. The same member of the public who attended and made comments at the first hearing made additional comments at the second hearing. She also provided written comments received, as did one other member of the public.¹² The Minnesota Department of Transportation (DOT) also submitted written comments.¹³ All comments are summarized below.

II. Introductions and Agency Presentations

Craig Janezich, a PUC staff member, explained the work of the PUC Energy Facilities Permitting Unit.¹⁴

Ray Kirsch, a staff member with the Energy Environmental Review and Analysis (EERA) unit at the DOC, explained the EERA's work and cooperation with the PUC. Kirsch also briefly reviewed some of the projects that the PUC permitted in 2022 or that were in the permitting process, including solar and wind farm projects and associated

⁵ Minn. Stat. § 216E.07; Minn. R. 7850.5400, subp. 2.

⁶ Minn. Stat. § 216E.07; Minn. R. 7850.5400, subp. 2.

⁷ Minn. Stat. § 216.17, subd. 2 (2022) permits service of notices by electronic mail.

⁸ See Ex. 1 at Certificate of Service and Service List (Oct. 19, 2022) (eDocket No. 202210-189941-01).

⁹ Ex. 1 at 2.

¹⁰ Ex. 3 (*Minnesota Environmental Quality Board Monitor*, Vol. 46, No. 44 (Nov. 1, 2022) (eDocket No. 202211-190390-01).

¹¹ See PUC Calendar, <https://mn.gov/puc/about-us/calendar/> (last visited on Jan. 20, 2022).

¹² Public Hearing Transcript (Hearing Tr. I) at 15-19 (Nov. 9, 2022); Public Hearing Transcript (Hearing Tr. II) at 10-15 (Dec. 5, 2022); Written comment by Carol Overland, Legalectric, Inc. (Dec. 30, 2022) (eDocket No. 202212-191731-01) (Overland Comments); Written comment by Marie McNamara (Dec. 30, 2022) (eDocket No. 202212-191719-01) (McNamara Comments).

¹³ Written comments by DOT (Dec. 21, 2022) (eDocket No. 202212-191542-01) (DOT Comments).

¹⁴ Hearing Tr. I at 5-7; Hearing Tr. II at 5-7.

power lines.¹⁵ In addition, a summary of these projects was provided in writing.¹⁶ Kirsch said that EERA was making an effort to ensure consistency in its recommended permit language, to encourage improved permit transparency and enforceability, and working with the PUC and Office of Administrative Hearings to ensure clarity in the roles of the various state agencies involved in the permitting process.¹⁷ Finally, Kirsch noted the three Midcontinent Independent System Operator (MISO) regional and interregional projects to construct high voltage power lines in Minnesota.¹⁸

Kate Fairman, planning director in the environmental review unit at the Department of Natural Resources (DNR), shared some comments about the DNR's participation in power plant siting.¹⁹ The DNR provides licenses for power lines to cross public lands and waters.²⁰ The DNR provides input to the utility permitting process by considering and sharing concerns regarding wildlife and natural resources with involved parties.²¹ The DNR coordinates with applicants early in the permitting process to provide them with information and technical expertise about proposed project impacts on natural resources and potential permitting conflicts.²² The DNR provides the PUC with data and options necessary for its balancing of environmental impacts with other power plant siting factors.²³ Finally, Fairman stated that the DNR works with other agencies, such as EERA, to make the permitting process more efficient, whilst conveying important information about natural resources to various parties in the process.²⁴

III. Summary of Public Comments

A. Oral Comments

Carol Overland of Legalectric, Inc. was the only member of the public to make oral comments at the hearings.²⁵ Overland recommended the PUC add this Report to its agenda for consideration and discussion in order to ensure the Annual Power Plant Siting Act hearing is a meaningful process for public engagement.²⁶ Overland is also concerned that neither she nor the public have been part of the state agency work group looking at improving public engagement.²⁷ She believes that more transparency about that group is necessary.²⁸ Kirsch responded to Overland's comments and advised that the work group is not public, but rather a group of staff persons from the PUC, DOC and the Office of

¹⁵ Hearing Tr. I at 9; Hearing Tr. II at 9-10.

¹⁶ EERA Summary, 2022 Annual Hearing (eDocket No. 202211-190325-01).

¹⁷ Hearing Tr. I at 7-8; Hearing Tr. II at 7-8.

¹⁸ Hearing Tr. I at 9; Hearing Tr. II at 9.

¹⁹ Hearing Tr. I at 10-14. Fairman provided her comments only at the November 9 hearing.

²⁰ *Id.* at 11.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 12-13.

²⁵ *Id.* at 15-19; Hearing Tr. II at 10-15.

²⁶ Hearing Tr. I at 15-18; Hearing Tr. II at 11.

²⁷ Hearing Tr. II at 14, 17-18.

²⁸ *Id.*

Administrative Hearings, who periodically meet to discuss their agencies' coordination of the environmental review process and better engage the public.²⁹

Overland recommended the work she and her clients have done concerning revisions to Minn. R. ch. 7849 and 7850 be reconsidered and that specific rules for siting wind turbines be promulgated.³⁰ She believes wind turbines are located too close to people and that the PUC does not take proper consideration of this.³¹ Overland is concerned that "wind guidance" was developed privately without public input, and incorrectly addresses turbine noise.³²

Overland commented that new high-voltage transmission lines are negatively impacting distributed electric generation.³³ She also stated that with coal plants shutting down, there should be more utilization and upgrading of existing transmission lines connected to those plants.³⁴

Overland believes task forces should be created for wind and solar projects to address problems with wind turbine shadow flicker, noise, protected areas, and waterways.³⁵

B. Written Comments

1. DOT

The DOT's written comments addressed its role in the siting and routing process, how it participates in the process, how it gauges its impact, its environmental stewardship, and its coordination with Minnesota Indian tribes.³⁶ DOT's role in the siting and routing process is to ensure safety of the users of roads and those who construct and maintain them.³⁷ DOT protects current and future rights of way, and evaluates and mitigates potential siting and routing effects on land the DOT owns.³⁸ DOT attempts to accommodate utilities within rights of way or as near to them as possible.³⁹

In advance of PUC permit approval, DOT participates in the permit approval process by pre-filing records with applicants and informing them how to submit DOT permits for approval.⁴⁰ It also provides information to the government agencies involved

²⁹ *Id.* at 16-17.

³⁰ Hearing Tr. I at 16-17; Hearing Tr. II at 11-12.

³¹ Hearing Tr. I at 17; Hearing Tr. II at 12.

³² Hearing Tr. I at 17-18.

³³ *Id.* at 18-19.

³⁴ *Id.*

³⁵ Hearing Tr. II at 12-13.

³⁶ DOT Comments.

³⁷ *Id.* at 2.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

and participates in PUC meetings and hearings.⁴¹ DOT also provides comments on scoping of projects and the environmental review process.⁴²

Following PUC permit approval, DOT manages rights of way and coordinates with applicants regarding other projects.⁴³ It also offers guidance, review, and issuance of permits concerning rights of way, driveways and highway access points, and oversized/overweight permits.⁴⁴

The DOT evaluates the effects of utilities on the state trunk highway (TH) system.⁴⁵ It also monitors compliance with laws and policies concerning rights of way.⁴⁶ DOT examines the impact of PUC siting and routing permits on other DOT properties, such as scenic easements and byways, rest areas, rail corridors, as well as on aeronautics.⁴⁷ DOT tracks the types of roads affected by PUC permitting, clear zone impacts, traffic control measures to consider, impact on freeway design, and impacts on bridges and other DOT structures.⁴⁸

The DOT also monitors environmental impacts within its purview, including roadside vegetation management, cultural resources, contaminated and regulated materials, and threatened and endangered species.⁴⁹

DOT continues to coordinate with Minnesota tribal communities when PUC projects affect TH right of way in Indian Country.⁵⁰

Finally, DOT noted that it is interested in discussions concerning the relationship between energy projects and the TH system, including wind turbine setbacks, shadow flicker effects on the travelling public, and other issues as they arise.⁵¹

2. Marie McNamara

Marie McNamara is a resident of Goodhue County and shared written comments. McNamara monitors the annual hearings and is concerned that items asked for by the public do not result in the requested changes occurring.⁵² McNamara specifically comments that health issues related to wind farms have not been addressed.⁵³ McNamara believes that the PUC has permitted inappropriate wind farms in Goodhue

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 3

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² McNamara Comments at 1.

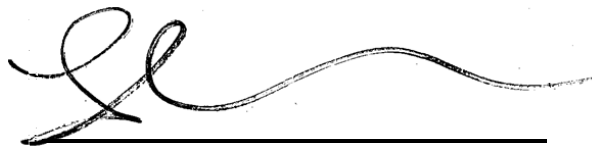
⁵³ *Id.* at 1-2.

County.⁵⁴ McNamara believes, generally, the requirements of Minn. Stat. § 216F and Minn. R. ch. 7854 are not being followed. She requests that this Report be shared with every elected member of the state house and senate.⁵⁵ She also requests that Minn. R. ch. 7849, 7850, and 7854 be revised to specifically address wind farms and their health effects.⁵⁶ Finally, McNamara requests that a task force be created to examine wind turbine noise.⁵⁷

3. Carol Overland

Carol Overland provided written comments, in addition to her oral comments at the two hearings.⁵⁸ This summary only addresses comments she made in writing. Overland supports virtual hearings for public participation and recommends they be used in perpetuity.⁵⁹ She also notes that public participation was higher in prior years when the annual hearing was accompanied by a potluck dinner, which helped encourage discussions and build relationships.⁶⁰ According to Overland, the current Power Plant Siting Act is not working.⁶¹

Dated: January 31, 2023



JIM MORTENSON
Administrative Law Judge

Reported: Transcribed (Shaddix & Associates)

⁵⁴ *Id.* at 2.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Overland Comments.

⁵⁹ *Id.* at 1.

⁶⁰ *Id.*

⁶¹ *Id.* at 1-2.

January 31, 2023

See Attached Service List

Re: *In the Matter of the 2022 Annual Power Plant Siting Act Hearing*

**OAH 5-2500-38717
MPUC 22-18**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **REPORT TO THE COMMISSION** in the above-entitled matter.

If you have any questions, please contact me at (651) 361-7943, dara.xiong@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



DARA XIONG
Legal Assistant

Enclosure

cc: Docket Coordinator

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CERTIFICATE OF SERVICE

In the Matter of the 2022 Annual Power Plant Siting Act Hearing	OAH Docket No.: 5-2500-38717
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On January 31, 2023, a true and correct copy of the **REPORT TO THE COMMISSION** was served by eService, and United States mail, (in the manner indicated below) to the following individuals:

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